NO. 20035

IN THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED CALIFORNIA BANK, a
California corporation,

Appellant,

vs.

JOHN M. ENGLAND, as Trustee
in Bankruptcy of FELDEN
INDUSTRIES, INC.,

Appellee.

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# REPLY BRIEF FOR APPELLEE

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for the Northern District of California,
Southern Division.

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# REPLY BRIEF FOR APPELLEE

## INTRODUCTION

The Referee, who was affirmed by the District Court held a chattel mortgage in favor of Appellant to be invalid against the trustee in bankruptcy under Section 70(c) of the Bankruptcy Act. The mortgage in question was held invalid under Section 2957 of the California Civil Code, which secti has now been repealed but was in effect at the time of the transaction and at the time of the Referee's decision. The decision of this Honorable Court may well be the last appel-

late decision involving Section 2957 of said Civil Code.

The property covered by the chattel mortgage was moved from Alameda County to San Mateo County and the appellant mortgagee failed to record the mortgage in San Mateo County, which the Civil Code required in the absence of the filing of a statement of recordation with the Secretary of State.

## STATEMENT OF FACTS

The statement of facts set forth by Appellant is incomplete to a material degree. The following statement of facts is provided so that all of the facts of the case will be before the Court.

On July 31, 1963, METAL FAB ENTERPRISES, INC., (hereinafter called METAL FAB) which had its principal place of business in the County of Alameda, State of California, executed a promissory note and a chattel mortgage (Exhibit 2) in favor of UNITED CALIFORNIA BANK (hereinafter called Appellant) covering certain personal property then located in Alameda County. The chattel mortgage was recorded in Alameda County on August 2, 1963.

On or about August 29, 1963, FELDEN INDUSTRIES, INC., the bankrupt herein (hereinafter called the Bankrupt) purchased the assets of METAL FAB and assumed its liabilities (Tr. 6-7, Supp. Tr. 3-5), leaving METAL FAB with at most a hollow corporate shell. At least one of METAL FAB's creditors did not release METAL FAB of its obligations,(Supp.Tr.10) so that all who were credito

of METAL FAB and did not release METAL FAB, remain creditors of METAL FAB despite the assumption of liabilities by the bankrupt. By reason of the assumption agreement they are also creditors of the Bankrupt.

The acquisition of the assets and assumption of the liabilities of METAL FAB by the Bankrupt were closely scrutinized by a creditors' committee of METAL FAB. (Tr. 13.) While Appellant was not a member of that creditors' committee, Appellant did attend meetings of the creditors' committee, and was in agreement with and fully informed as to the transfer of METAL FAB's assets to the Bankrupt and the assumption of the liabilities of METAL FAB by the Bankrupt. (Tr. 13; see also Tr. 19.)

The assets so acquired were moved by the Bankrupt to its premises in Menlo Park, San Mateo County, within approximately two weeks of the date of acquisition and remained in San Mateo County at the time of the filing of the petition in bankruptcy by the Bankrupt. (Tr. 7, 11.) The chattel mortgage was never recorded in the County of San Mateo, nor was a statement of recordation ever filed with the Secretary of State of California as required by statute, although such recordation or filing would have fully protected Appellant. Appellant negligently permitted a secret lien to arise. (Tr. 8.)

The following facts were omitted by Appellant in its Brief, yet are determinative of this case. Prior to assumption of the liabilities of METAL FAB by the Bankrupt,

METAL FAB was indebted to CYCLONE SANDBLAST EQUIPMENT COMPANY (hereinafter referred to as CYCLONE). (Supp. Tr. 8-10.) At the time of the assumption of liabilities of METAL FAB by the Bankrupt, CYCLONE remained a creditor of METAL FAB and became a creditor of the Bankrupt. (Supp. Tr. 7, 8-10, Exhibit 1.) CYCLONE was not aware of the existence of the mortgage and was a creditor of the bankrupt up to and including the date of bankruptcy. (Supp. Tr. 10.) CYCLONE at no time released METAL FAB from its debts and to date remains a creditor of METAL FAB. (Tr. 10.)

Therefore CYCLONE was a creditor of the Bankrupt who was a creditor of the mortgagor at the time of the execution of the mortgage.

The Bankrupt voluntarily filed a petition in bankruptcy on July 14, 1964. The trustee subsequently filed an application for an order determining the lien of Appellant to be invalid as against the estate of the Bankrupt and on December 17, 1964, the Referee entered his order granting the trustee's application and declaring the chattel mortgage to be invalid as against the trustee. The District Court affirmed the Referee's order and the appeal is from this order.

THE BASIS OF THE TRUSTEE'S RIGHTS

The trustee's rights are derived principally from the provisions of Section 70(c)* of the Bankruptcy Act and from a

*"The trustee, as to all property, whether or not coming into possession or control of the court, upon which a creditor of the bankrupt could have obtained a lien by legal or equitable proceedings at the date of bankruptcy, shall be deemed vested as of such date with all the rights, remedies, and powers of a creditor then holding a lien thereon by such proceedings, whether or not such a creditor actually exists."

United States Supreme Court in Moore v. Bay, 284 U.S. 4, 76 L. Ed. 133.

The United States Supreme Court in Moore v. Bay and subsequent decisions uniformly holds that the trustee is subrogated to the rights of any actual creditor of the bankrupt even though those rights would not otherwise be enjoyed by all creditors of the bankrupt. If a security interest, at the time of bankruptcy, is void as against one creditor, then it is void as against the trustee.

The present security interest is void, under California law, as against one creditor of the bankrupt, to wit, CYCLONE, and therefore it is void as against the trustee.

THE CHATTEL MORTGAGE IS INVALID AS AGAINST AN EXISTING CREDITOR OF THE BANKRUPT

CYCLONE SANDBLAST EQUIPMENT COMPANY was a creditor of the Bankrupt at the time of the filing of the petition in bankruptcy and its claim remains unsatisfied. (Supp. Tr. 8-9) CYCLONE was a creditor of the mortgagor, METAL FAB, prior to execution of the mortgage by METAL FAB (Supp. Tr. 8-9; Claim No. 54), and at all times thereafter. (Supp. Tr. 10.) CYCLONE did not release METAL FAB of its obligation. (Supp. Tr. 10.) At no time did CYCLONE have knowledge of the existence of the chattel mortgage. (Supp. Tr. 10.)

The chattels were moved to San Mateo County shortly after they were transferred to theBankrupt. (Tr. 7, 11.) The chattel mortgage was never recorded in San Mateo

County and Appellant did not avail itself of its right to file a statement of recordation with the Secretary of State pursuant to Civil Code Section 2957, (Tr. 8, App. Opening Brief, p.3.) which would have protected it no matter to what county the mortgaged property was removed.

A chattel mortgage is valid as against creditors of the mortgagor and others, if it is recorded in the county in which the chattels are located. (Civil Code §2957)* This protection continues only so long as the chattels remain in the county in which the mortgage is recorded. If the chattels are removed to another county, the protection ceases. This is true, whether or not the mortgagee learns that the chattels have been moved. However, Appellant knew and participated in the transfer of assets from METAL FAB to the Bankrupt (Tr. 13) and so knew that the removal of chattels was imminent, and certainly was aware of the removal when it signed the assumption agreement. (Exhibit 1) Even after that date Appellant did not record in San Mateo County.

* "A mortgage of personal property or crops is void as against creditors of the mortgagor and subsequent purchasers and encumbrancers of the property in good faith and for value, unless ....The mortgage, if of personal property other than crops growing or to be grown or animate personal property, is recorded in the office of the recorder of each of the counties where the property mortgaged is located and where the mortgagor resides at the time the mortgage is executed, provided that in case the mortgagor is a nonresident of this State no recordation where the mortgagor resides is required, and, in case the property

owner's own application for such permit in the form of
title a recordable [illegible] with the Secretary of State
pursuant to Civil Code Section 2911, [illegible] Section
2116. [illegible] would have provisions to be added to
what County the document property was received.

A chattel mortgage is valid as against creditors
of the mortgagor and others, if it is recorded in the county
in which the property is located. (Civil Code §2957)
This provision protects prior to [illegible] se-
cured in the county to which the property is removed. It
has always been treated to another county, the protection
ceases. This is true, whether or not the mortgagee knows
that the property has been moved. Comment: Appellant knew
and participated in the transfer of assets from Bethel Inc
to the Partridge Inc. It was known that the property
carried was insecure, and certainly was aware of the re-
moval even if other [illegible] knowledge. Therefore it
does [illegible] not protect [illegible] from the
county.

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A mortgage of personal property or fixtures is void as against
creditors of the mortgagor and subsequent purchasers and en-
cumbrancers of the property in good faith and for value, unless
... The mortgage is of personal property other than crops
growing or to be grown or annual growth of [illegible]
in the office of the County [illegible] at the request of the
mortgagee, [illegible] [illegible] [illegible]
at the time the mortgage is executed, provided that in case the
mortgagor is a minor at the time the mortgage is executed
the mortgage [illegible] [illegible]

Naturally, the Legislature has provided a method by which a mortgagee can continue the perfection of the chattel mortgage in the event the chattels are removed to another county. In fact, the Legislature has provided three alternative methods. A mortgagee may adopt the method which is the most convenient. Under Civil Code Section 2957, a mortgagee may, upon removal of the chattels to another county, reperfect the mortgage by one of three methods. The mortgagee may:

(1) Rerecord the mortgage in the county to which the chattels are moved.

(2) At any time after the mortgage is executed, file with the Secretary of State a statement of recordation.

(3) Take possession of the property, and sell it as authorized in Civil Code Section 2966. (Civil Code §2965)**

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* mortgaged is thereafter removed to another county of this State, either the mortgage is recorded in that county or there is or has been filed a statement of recordation as prescribed in Section 2965;...." (Civil Code, §2957.)

** "When personal property mortgaged...is removed from the county in which it is situated, constructive notice of the mortgage imparted by recordation shall not be affected thereby for 30 days after such removal; but after the expiration of such 30 days, said recordation shall not impart constructive notice while said property remains removed from the county: (1) Until the mortgagee causes the mortgage to be recorded in the county to which the property has been removed; or (2) Unless the mortgagee causes or has caused a statement of recordation to be filed; or (3) Until the mortgagee takes possession of the property as prescribed in the next section. The statement of recordation shall be filed with the Secretary of State, signed by the mortgagee, stating that a mortgage of personal property has been recorded, the kind or kinds of personal property mortgaged, recording data as to permit the record to be located, and the name and chief place of business of each of the mortgagor and mortgagee...." (Civil Code, §2965.)

The statement of recordation referred to above is simply a statement, signed by the mortgagee, stating that a mortgage of personal property has been recorded. The statement includes the kinds of personal property mortgaged, the recording data to permit the record to be located, and the name and chief place of business of the mortgagee and mortgagor.

The statement of recordation is foolproof protection to the mortgagee which relieves him of the burden of keeping track of the mortgaged property. If the mortgagee files this simple statement with the Secretary of State, the property may be moved from county to county without prejudicing his rights.

Any prudent mortgagee of personal property would obviously file a statement of recordation with the Secretary of State as to each chattel mortgage. The failure to do so constitutes an assumption of the burden of watching the property and rerecording in another county if the property is moved.

Appellant failed to avail itself of the simple protection offered by statute - protection designed to enable mortgagees to relax and forego periodic surveillance of the chattels. Having failed to take ordinary caution and having failed to pursue any of the several protective courses provided by statute, Appellant can hardly complain that a creditor of the mortgagor, CYCLONE, is thus enabled to set aside the chattel mortgage.

Appellant is in no position to complain that the statutes should not be followed exactly or that the Legislature might have devised a scheme more likely to impart actual notice to certain creditors. The recording statutes are very precise and they require, upon removal of chattels to another county, recordation of the mortgage in the county to which the chattels were moved, unless the mortgagee has elected to file a statement of recordation.

Appellant appears critical of the method established by the Legislature to provide notice to creditors. The California Supreme Court has held, while considering the very statute at hand, that "(W)hat is 'notice to the world' must be and is committed to the legislative judgment." (Hopper v. Keys, 152 Cal 488, 494) The California Supreme Court indicates in its opinion that some states hold that recordation of the mortgage in the county in which the chattels are located is "notice to the world", even if the chattels are subsequently moved. However, California has decided, by statute, that such recordation is not notice after the chattels have been moved.

The California Supreme Court in Hopper v. Keys, supra, indicated that the procedure established by the Legislature is inflexible and is "indispensably necessary to preserve the rights of the mortgagees against creditors...." (152 Cal at 494-5) The court continued:

> "In fact, the language of Section 2965 of the Code is so plain and unambiguous that construction is unnecessary. The failure of the appellants to do either of the things in Sonoma County required by that section had the effect, in our opinion, of exempting ipso facto, the property from the operation of the mortgage, so far as it affected creditors of the mortgagor."
> (at 152 Cal. 495) (emphasis added)

The Court pointed out that recordation is a substitute for manual delivery and that "all rights accruing by virtue of such mortgages can be protected and preserved only by fully meeting the requirements of the statute and strictly observing its provisions." (152 Cal. at 493) The California Supreme Court notes the strong policy of the law against secret liens "and that mortgages of personal property are permitted only in certain specified cases, and then only upon the observance of certain formalities...." (152 Cal. at 494) (emphasis added)

Appellant contends, beginning at the bottom of page 13 of its Brief, that even if the mortgage had been recorded in San Mateo County, it would not have imparted notice to creditors of the Bankrupt. We note from the above discussion that strict compliance with the recording statutes is required and that it does not matter whether the recordation would have imparted notice to creditors of the Bankrupt.

However, recording of the chattel mortgage in San Mateo County would in fact have imparted notice to creditors of the Bankrupt who knew of the transfer of assets of METAL FAB to the Bankrupt. Such creditors, when checking the

San Mateo County Recorder's Office for recordation of a chattel mortgage, would check both in the name of the Bankrupt and in the name of METAL FAB and so learn of the existence of the chattel mortgage. Thus, Appellant's contention that such recordation would be futile is erroneous.

It is important to note that under Civil Code Section 2957, a chattel mortgage not properly recorded (in the absence of a properly filed statement of recordation) is "void as against creditors of the mortgagor...." CYCLONE was and still is a creditor of the mortgagor, METAL FAB. In the decision relied upon by Appellant (Talcott v. Hurlbert (1904) 143 Cal. 4) there was no "creditor of the mortgagor" at the time in question, by reason of a release of the mortgagor by his creditors, and therefore the statutory requirement was not met. The case of Talcott v. Hurlbert , relied upon by Appellant, is for that reason inapplicable.

CYCLONE had no actual notice of the mortgage and, by reason of Appellant's failure to comply with the requirements of Civil Code Section 2957, had no constructive notice. The mortgage became a secret lien after the chattels were moved.

There can be no question that Section 2957 applies to CYCLONE, as CYCLONE was a creditor of the mortgagor prior to execution of the mortgage and such prior creditors are protected. As stated at 1 Witkin, Summary of California Law, pp. 685-686:

"The defective mortgage is void as against subsequent creditors of the mortgagor without notice, and subsequent purchasers and encumbrancers in good faith, for value, and without notice. (CC §2957, 2973.) (Cf. Unif. Com. C. §9-301.) It is also void as against all prior creditors of the mortgagor, even if they had actual notice. Under CC §2973, the mortgage is valid as to persons who have actual notice before parting with value. The prior creditors, i.e., those who have extended credit before the execution of the mortgage, are no longer in a position to withhold that credit, and hence are entitled to protection regardless of whether they have notice of the invalid mortgage. (Old Settlers' Inv. Co. v. White (1910) 158 C. 236, 110 P. 922; Noyes v. Bank of Italy (1929) 206 C. 266, 274 P. 68; Rolando v. Everett (1946)72 C.A. 2d 629, 165 P. 2d. 33; see 19 So. Cal. L. Rev. 444.)"

The California Supreme Court has construed Section 2957 as applied to existing creditors. (Noyes v. Bank of Italy, 206 Cal. 266) This court has recognized and applied the construction of the California Supreme Court in its decision in Bank of America v. Sampsell, 114 Fed. 2d. 211, 212. "The California courts have construed the general chattel mortgage recording statute...in para materia with Section 3440 of the Civil Code as requiring an immediate recording. Failure promptly to record renders the mortgage invalid as against all creditors who become such prior to the date of recording." There can be no doubt that the mortgage was invalid as against CYCLONE.

## THE CHATTEL MORTGAGE IS INVALID AS AGAINST THE TRUSTEE

Having established that the mortgage is invalid as against CYCLONE and noting further that CYCLONE was an

actual creditor of the Bankrupt as of the date of bankruptcy, it necessarily follows that the mortgage is invalid as against the trustee.

Appellant devotes all of its energies to demonstrating that the trustee cannot successfully rely upon the rights of a hypothetical creditor. The trustee did not rely upon the rights of any hypothetical creditor and the Referee did not base his decision upon such a ground.

This Court, in a recent opinion, (Pacific Finance Corporation v. Edwards (1962) 304 F. 2d. 224, 228.) redeclared that under Bankruptcy Act Section 70(c) the trustee succeeds to the rights of an actual creditor of the bankrupt whether or not that creditor actually obtained a lien upon the property of the bankrupt. It is enough that the actual creditor could have obtained a lien. Under the California attachment and execution laws, CYCLONE could have obtained such a lien.

While there has been considerable discussion and some confusion in recent years as to the limits of the ability of the trustee to succeed to the rights of a hypothetical creditor, the United States Supreme Court and other Federal courts have held that the trustee succeeds to the rights of an actual creditor. (Moore v. Bay, 284, U.S. 4, 76 L. Ed. 133, Zamore v. Goldblatt, 194 F. 2d. 933, 934-935.)

In Zamore v. Goldblatt, supra, the Court of Appeals for the Second Circuit met the question head on:

"It is argued by the appellants that the trustee could not attack the mortgage because he represented only one small creditor whose claim arose before the date of the filing but one creditor who could attack it was enough to void the mortgage under Section 70, sub. c of the Bankruptcy Act, 11 U.S.C.A. §110, sub. c, against later creditors represented by the trustee. Moore v. Bay, 284 U.S. 4, 52 S. Ct. 3, 76 L. Ed. 133; In re Sachs, 4 Cir. 30 F. 2d 510, 514, 515; City of New York v. Rassner, 2 Cir. 127 F. 2d 703, 707." (194 F. 2d at 934, 935.) (emphasis added)

In City of New York v. Rassner 127 F. 2d 703, 707, the court also distinguished between the rights of creditors generally and the rights of a particular creditor:

"It is true that the chattel mortgages were valid as against the bankrupt. But in many cases chattel mortgages are valid as against some creditors and not others; and yet ever since Moore v. Bay, 284 U.S. 4, 52 S.Ct. 3, 76 L.Ed. 133, 76 A.L.R. 1198, it has been considered proper to invalidate a mortgage in toto even though the only creditor entitled to invalidate has an insignificant claim, and proper to distribute the proceeds among all the creditors. See General Motors Acceptance Corp. v. Coller, 6 Cir., 106 F.2d 584, certiorari denied 309 U.S. 682, 60 S.Ct. 723, 84 L.Ed. 1026; Corley v. Cozart, 5 Cir., 115 F.2d 119

In Corley v. Cozart, 115 F. 2d 119, the court held:

"A claim void as against some of the creditors of a bankrupt may be avoided in its entirety by the trustee even though creditors generally benefit by the avoidance. [citations]" (115 Fed.2d at 121.)

While innumerable other cases may be found supporting the succession by the trustee, under Section 70(c), to the rights of an actual creditor of the bankrupt, further examples would merely be cumulative. Appellant has not and cannot answer the doctrine enumerated by the United States Supreme Court in Moore v. Bay, but instead relies upon the irrelevant discussion of the rights of hypothetical creditors.

## INAPPLICABILITY OF TALCOTT v. HURLBERT

Appellant relies upon the decision in Talcott v. Hurlbert, 143 Cal. 4 (1904). That decision is not controlling in this case.

The decision in Talcott v. Hurlbert arose under the old California Insolvency Law. The purchaser of the mortgaged property had been adjudged insolvent and an assignee was appointed. As the Court noted (143 Cal. at p. 7), "The assignee (i.e., the assignee of the insolvent party) can be allowed no greater rights than the corporation would have had in the case." By contrast, under Section 70c of the Bankruptcy Act, the trustee in bankruptcy is entitled to greater rights than the bankrupt. The trustee succeeds to the rights of creditors of the bankrupt.

In Talcott v. Hurlbert, the creditors of the mortgagor, upon assumption of the mortgage by the assignee of the mortgagor released the mortgagor of its debts. Thus, in that case there were in fact no "creditors of the mortgagor" as required under Section 2957 of the Civil Code. In the present case one of the creditors of the mortgagor, to wit, CYCLONE, did not release METAL FAB, the mortgagor. Thus, in this case there remains a creditor of the mortgagor as required by the statute.

Because there was no creditor of the mortgagor who could object to the unrecorded mortgage in Talcott v. Hurlbert,

[illegible] [illegible] [illegible] [illegible],
143 Cal. 4 (1904). [illegible] [illegible] [illegible]
[illegible] [illegible].

The decision in [illegible] [illegible] [illegible]
the old California [illegible] [illegible]. The purchaser of the
mortgaged property had been obliged [illegible] and an
[illegible] was appointed. As the Court noted (143 Cal. at
p. 7). "The assignee (i.e., the assignee of the [illegible]
party) can be allowed no greater rights than the
corporation would have had in the case." By [illegible]
under section 726 of the [illegible] Act, the trustee in
bankruptcy is entitled to exercise [illegible] the
the powers available to the rights of creditors of the
bankrupt.

In [illegible] v. [illegible], the mortgagee of the
mortgagor, upon assumption of the mortgage by the assignee
of the mortgagor released the mortgagor of his debts.
Thus, in this case there was in fact no "abolition of the
mortgagor" as required under Section 2877 of the Civil Code.
In the present case not of the creditors of the mortgagor,
as [illegible], did [illegible] [illegible], the mortgagor
Thus, in this case there remains a [illegible] of the mortgage
as required by the statute.

Despite there has no [illegible] of the mortgagor the
[illegible] to the [illegible] mortgage in [illegible] v. [illegible]

the case was determined upon that fact and the remainder of the decision constitutes dicta.

The result reached by the Referee, and affirmed by the District Court, is consistent with decisions reached under similar facts, although by different reasoning, by the Court of Appeals for the Second Circuit in the case of In re Rambler Cafeteria, Inc., 9 Fed.2d 831, and by the Court in Fidelity Trust Co. v. Staten Island Clay Co., 70 N.J. Eq. 558, 62 Atl. 441.

the case was dismissed upon that fact and the remainder of the decision consolidated.

The result reached by the Bahnsen, and affirmed by the District Court, is consistent with decisions reached under similar facts, although by different reasoning; in the court of Appeals the two leading cases in the area of In re Bowler Dairies, Inc., 7 Fed 2d 932, and in the Court is Fidelity Trust Co. v. Jersey Island Dairy Co., 70 F.2d, Cp. 178, 42 Sct. 44).

## CONCLUSION

The trustee, appellee herein, submits that the facts conclusively establish the following points:

1. The chattels subject to the chattel mortgage were moved from Alameda County to San Mateo County and no steps were taken, as required by statute, to continue the perfection of the chattel mortgage.

2. By reason of the failure of Appellant to continue the perfection of the mortgage by re-recording the mortgage or by filing a statement of recordation, the mortgage was void as to "creditors of the mortgagor."

3. Cyclone was a "creditor of the mortgagor."

4. The mortgage was void as against Cyclone.

5. Cyclone is a creditor of the bankrupt.

6. The mortgage is therefore void as against the trustee, the appellee herein.

The appellee respectfully submits that the order of the Referee, affirmed by the District Court, is correct in all respects and that the order of District Court sustaining the Referee should be affirmed.

DATED: March 28, 1966

Respectfully submitted,

AUGUST B. ROTHSCHILD
WILLIAM KELLY
ROTHSCHILD & KELLY

By August B. Rothschild
August B. Rothschild
Attorneys for Appellee

## C E R T I F I C A T E

I hereby certify that in connection with the preparation of this Brief I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing Brief is in full compliance with those rules.

August B. Rothschild

AFFIDAVIT OF SERVICE

UNITED STATES OF AMERICA )
NORTHERN DISTRICT OF CALIFORNIA ) ss.
CITY AND COUNTY OF SAN FRANCISCO )

WILLIAM KELLY, being first duly sworn, deposes and says:

I am a citizen of the United States over the age of 18 years and not a party to the within above entitled action; my business address is 155 Montgomery Street, San Francisco, California.

On March 28, 1966, I served the within REPLY BRIEF FOR APPELLEE upon the persons named hereafter by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States Post Office mail box at San Francisco, California, addressed as follows:

JOHN K. DERHAM
JOSEPH A. KIERNAN
RODNEY G. COMMONS
PAUL R. SPECKMAN, JR.
405 Montgomery Street
San Francisco, California 94104

WILLIAM KELLY

WILLIAM KELLY

Subscribed and sworn to before me this 28th day of March, 1966.

(Seal)

FRANCES R. WIENER
NOTARY PUBLIC
In and for the City and County of San Francisco, State of California.
My Commission expires: February 17, 1970.